

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TEXTRON INNOVATIONS INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-486 (GMS)
)	
THE TORO COMPANY,)	
)	
Defendants.)	
)	

ORDER

WHEREAS, on July 12, 2005, the plaintiff, Textron Innovations Incorporated (“TII”) filed the above-captioned action against The Toro Company (“Toro”), alleging infringement of United States Patent Nos. 6,047,530, 6,336,311, and 6,336,312, which are directed to a gang type rotary mower;

WHEREAS, on February 7, 2006, the court issued a Scheduling Order (D.I. 40), setting June 1, 2006, as the cut-off date for Toro to serve its Prior Art Statement;

WHEREAS, the Scheduling Order further states that an amendment to Toro’s Prior Art Statement can be made only by leave of court, upon a showing: (a) that it was not and could not reasonably have been located earlier by Toro; (b) that it is not merely cumulative of prior art already listed; and (c) how Toro will be prejudiced if leave is denied, and TII will not be prejudiced if leave is given;

WHEREAS, on December 22, 2006, Toro filed a Motion for Leave to File an Amended Prior Art Statement (D.I. 146);

WHEREAS, the motion asserts that Toro recently discovered twelve additional prior art references not disclosed in its Prior Art Statement and requests the court’s permission to add those

references;

WHEREAS, on January 10, 2007, TII filed an opposition (D.I. 158) to Toro's motion; and

WHEREAS, after having considered the parties submissions on the motion (D.I. 146, 158), as well as the standard set forth in the Scheduling Order, the court concludes that Toro has made the appropriate showing with respect to the twelve prior art references it seeks to add to its Prior Art Statement;

IT IS HEREBY ORDERED that:

1. Toro's Motion for Leave to File an Amended Prior Art Statement (D.I. 146) is
GRANTED.

Dated: January 22, 2007

/s/ Gregory M. Sleet
UNITED STATES DISTRICT JUDGE